



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/761,387

01/22/2004

Dennis M. Vigil

12013/47103

2425

23838

7590

08/09/2006

KENYON & KENYON LLP

1500 K STREET N.W.

SUITE 700

WASHINGTON, DC 20005

EXAMINER

MCCORKLE, MELISSA A

ART UNIT

PAPER NUMBER

3763

DATE MAILED: 08/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Art Unit: 3763

DETAILED ACTION

1. In response to applicant's telephone inquiry regarding the last Office action, the following corrective action is taken.

The period for reply of 3 MONTHS set in said Office Action is restarted to begin with the mailing date of this letter.

Double Patenting

1. Claims 1-4, 7, 9-10, 12-14, 17, 19-23, 26 & 28 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4, 6, 8, 10, 12-14, 16, 18, 20-23, 25, 27 of U.S. Patent No. 6,695,830. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims would be obvious over the currently pending claims.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims rejected under 35 U.S.C. 102(b) as being anticipated by March et al (5,306,250.) March discloses a method for releasing fluid medicaments into a vessel wall of a patient at a treatment site, the method comprising the steps of providing an expanding member 46 defining an axis and having a plurality of dispensers 48 mounted on said expanding member for movement therewith, said dispensers consisting only of dispensers positioned in a single plane oriented substantially perpendicular to said axis

Art Unit: 3763

[fig 7]; advancing said expanding member through the vessel to the site; moving said expanding member between a first configuration [fig 2] wherein said dispensers are positioned substantially adjacent of said expanding member, and a second configuration [fig 3] wherein said dispensers are radially extended from said axis penetrating into the vessel wall; and providing a fluid medicament and releasing said fluid medicament through said dispensers into the vessel wall for substantially circumferential dispersion of said fluid medicament into said vessel wall [column 5 line 55 – col 6 line 54, and claim 1; furthermore it is inherent to provide an object if all structural limitations are met];

4. wherein said fluid medicament inhibits the proliferation of smooth tissue growth in the vessel [col1 line 35, furthermore since all structural limitations are met it is inherent that the device will function as claimed];

5. wherein said fluid medicament stimulates the production of collateral vessels [col 1 line 30, furthermore since all structural limitations are met it is inherent that the device will function as claimed].

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3763

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 3, 13, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable

over March et al in view of Wilcox et al (5,681,289.) March discloses all of applicant's

basic inventive concept of a method of delivering medication into an arterial wall with

the exception of the fluid medicament comprising a radioactive isotope. Wilcox shows

this feature to be old in the medical delivery devices art. It would have been obvious to

one of ordinary skill in the art at the time of applicant's invention to use a radioactive

isotope in the delivery device for the well-known purpose of providing for infection and

pain control (column 1 lines 15).

9. Claims 7, 9, 17, 19, 26, & 28 are rejected under 35 U.S.C. 103(a) as being

unpatentable over March in view of Nabel et al (5,328,470.) March discloses all of

applicant's basic inventive concept of a method of delivery medication into an arterial

wall with the exception of the fluid medicament comprising a binder which binds to at

least a portion of the vessel wall, or wherein said fluid medicament comprises a gene for

gene therapy. Nabel shows these features to be old in the medical delivery devices art.

It would have been obvious to one of ordinary skill in the art at the time of applicant's

Art Unit: 3763

invention to have the medicament comprise a gene or a binder for the purpose of treating the specific diseases that these medicaments treat [see col 8 lines 8-46].

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa A. McCorkle whose telephone number is (571) 272-2773. The examiner can normally be reached on Monday - Friday, 8:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melissa A McCorkle
Examiner
Art Unit 3763

Art Unit: 3763



NICHOLAS D. LUCCHESI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700